TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

April 13, 2004

Date:

U.I.L. Nos.
501.06-00
501.06-01
501.06-02

Congressional Contact: July 12, 2005

Employer Identification Number: *****

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in the state of ***** on *****.

The Articles of Incorporation (Articles) that you filed on *****, state that you were to be organized and operated exclusively as a tax exempt organization within the meaning of Section ***** of the Internal Revenue Code (Code). Your purpose was described as being:

> (t)o promote, support, and assist in any way the efforts of "******", as that term is defined in *****, in pooling their common interest, efforts, and purchasing power in an effort to effectively *****, and to provide for education in connection with *****costs and the reduction thereof.

On *****, you filed amended Articles that state that you are organized and shall be operated exclusively as a tax exempt organization within the meaning of Section 501(c)(6) of the Code. Your stated purpose remains the same as that described in the original Articles.

You submitted a Form 1024 dated *****, requesting recognition of exemption under section 501(c)(6) of the Code. You also furnished a copy of an application that you had previously filed for exemption under section *****, along with a copy of a letter from the Service denying you exemption under that Code section.

Your Bylaws provide that your only members will be *****. You describe yourself as ***** created for the purpose of providing quality products at significant market discounts. Referring to Rev. Rul. 67-264, 1967-2 C.B. 196, you state that your Member ***** represent an association of ***** that promote the cooperative method of doing business in order to secure high-quality,

low-cost ***** benefits and associated ***** services for their respective ***** members consistent with section 501(c)(6) of the Code.

You state that you assist and coordinate ***** cost containment efforts by your members, including educational efforts, and that you promote ***** through ***** concerning cost containment.

In your application for exemption under section 501(c)(6) of the Code, you state that you have been established to protect, promote and improve the interests of ***** employees in connection with benefits provided through their employment. You further state that you have been specifically organized to improve the employees' welfare by improving upon the quality, service and costs of ***** benefits. You state that this is to be accomplished by your working with your member *****. You explain that through the combined efforts of your Member *****, you provide greater benefits, both with respect to quantity and quality, to ***** employees at a lower cost than would be possible on an individual fund basis.

You explain that because of the combined number of ***** employee participants in your Member *****, you are able to obtain an arrangement for the group at a more favorable cost and quality than the individual Member ***** could obtain on their own. You obtain bids and negotiate an arrangement for a ***** to be offered to all of your Member *****. The Member ***** may choose to participate in all, some or none of the options offered. Through your Member *****, the ***** and other ***** arrangements are made available to ***** employees.

You state that you utilize ***** to negotiate savings in the ***** contract, to secure service guarantees, and, to obtain other value added services, such as "******" as part of the ***** contract. You state that as your list of members continues to grow, the negotiated discounts become more favorable. You further state that you monitor the providers that are selected, and assist Member ***** to resolve any problems with providers and to negotiate future contracts.

You furnished information regarding arrangements that you have entered into for services to be provided to participating enrolled Member ***** and ***** members. The name of the ***** and the services you have contracted for include:

***** Contract	Services Provided
*****	***** services to provide administrative and cost controlling services for ***** to provide quality, low-cost ***** for ***** members.
*****	

***** Contract	Services Provided
*****	***** services to provide administrative and cost controlling services for Member ***** to provide high quality, low-cost ***** for ***** members [Above-referenced services at a deeper discounted rate]
	***** services to provide administrative and cost controlling services for Member ***** to provide high quality, low-cost ***** for ***** members
*****	***** ***** to provide administrative and cost controlling services for Member ***** to provide high quality, low-cost ***** for ***** members
*****	To provide ***** to ***** members
*****	To provide ***** to ***** members
*****	***** to provide administrative and cost controlling services for Member ***** to provide high quality, low-cost ***** for ***** members

In your application, you identify your major sources of support, in order of size, as being (1) ***** fees earned through member *****' participation in the ***** contracts negotiated on behalf of the Member *****; (2) dues assessed to Member ***** annually; and, (3) application fees charged for prospective Members.

The following information is taken from audited financial statements you provided:

Revenue	*****	*****	*****	*****	*****
Membership Fees[1]	*****	*****	*****	*****	*****
Program Revenues[2]					
*****	*****	*****	*****	*****	*****
*****	*****	*****	*****	*****	------
*****	------	*****	*****	*****	-----
*****	*****	*****	------	------	------
*****	*****	------	------	------	-----

Expenses	*****	*****	*****	*****	*****
Conferences, meetings and travel	*****	*****	*****	*****	*****
Salaries and related taxes	*****	*****	*****	-----	------
Contract services	*****	*****	*****	-----	------
Other Expenses[3]	*****	*****	*****	*****	*****

Cash Flow from operating activities:	*****	*****	*****	*****	*****
Cash received from members and program participants	*****	*****	*****	*****	*****
Cash paid to service providers	(*****)	(*****)	(*****)	(*****)	(*****)

[1]Membership fees represent initial and/or annual amounts charged to member *****.

[2] Program fees represent amounts remitted to the Corporation based on participation in programs promoted by the Corporation. According to ***** summary for ***** and *****, primarily based upon the use, by member *****, of certain programs, which are promoted by the Corporation.

[3]Other Expenses: audit and accounting fees, consulting fees, legal fees, current and deferred federal income tax expense, *****, dues and subscriptions, secretarial services, printing and postage, office expense, employee benefits, telephone, automobile, depreciation expense, ***** rebates, advertising, bank fees, printing and postage, dues and subscriptions, office expense, interest expense, and donations (all expenses may not apply in a particular year).

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in part, that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In Growers Cold Storage Warehouse Co. v. Commissioner, 17 B.T.A. 1279 (1929), an organization that operated a cold storage warehouse for its members on a cooperative basis was denied exemption under section 231(7) of the Revenue Act of 1921 [which corresponds to section 501(c)(6) of the Internal Revenue Code of 1986] because the organization's primary activities were found to constitute the performance of particular services for individual persons. The Court found that even though the organization was not organized for profit and no part of the net earnings inured to the benefit of any private stockholder or member, the members' combining in order to save expenses did not constitute a business league.

In Produce Exchange Stock Clearing Association v. Helvering, 71 F.2d 142 (2nd Cir. 1934), a stock clearing association was denied exemption as a business league where its purpose was to provide a business economy or convenience for individual traders. The court found that

nothing was being done by the organization to advance the interests of the community or to improve the standards or conditions of a particular trade.

In Apartment Operators Association v. Commissioner, 136 F.2d 435 (9th Cir. 1943), exemption as a business league was denied to an organization formed to facilitate the purchase of supplies and equipment and to supply management services for its members. The court found that the organization did not appear to answer the description of a business league. Among other things, the organization performed particular services for individual persons, as witnessed by activities that included the furnishing of credit information, the supplying of an apartment shopping service, the making of arrangements for direct purchases by members at discount, and similar activities.

In Evanston-North Shore Board of Realtors v. United States, 320 F.2d 375 (Ct. Cl. 1963), cert. denied, 376 U.S. 931 (1964), the Court of Claims held that a real estate board whose primary purpose and activity was the operation of a multiple listing service for its members was not exempt under section 501(c)(6) of the Code. The court stated that where such a "service is operated primarily for individual members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business conditions within the [industry] generally . . . the operation is not an activity warranting an exemption under the statute."

In Indiana Retail Hardware Association, Inc. v. United States, 366 F.2d 998 (Ct. Cl. 1966), an organization formed to facilitate the purchase of supplies and equipment and to supply management services for its members was found not to be exempt under section 501(c)(6) of the Code. The court found that the high percentage of income obtained by the organization from performing particular services for individuals as a convenience and economy in their business, along with its other income-producing activities, and the amount of time devoted by employees of the organization to the performance of these services was sufficiently substantial so that the activities could not be said to be merely incidental.

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (CA2 NY 1973), cert. den. 419 U.S. 827, the court denied exemption under section 501(c)(6) of the Code to a cooperative that was neither organized for profit nor engaged in traditionally profit-motivated activity where individual benefits were precisely proportional to the member's financial involvement in the organization. The court stated that "(w)here, as here, those individual benefits are precisely proportional to the member's financial involvement in the organization, the fundamentally non-exempt purpose of providing a necessary service at reduced cost becomes too clear to be ignored." The court found that there was only a small, incidental benefit gained by plumbers in the community as a whole from the organization's activities. The organization failed to prove that its primary purpose was the improvement of business conditions as distinguished from the performance of particular services for individual persons.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that an organization whose principal activity consists of furnishing particular information and specialized individual service to its individual members, through publications and other means to effect economies in the operation of their businesses, is performing particular services for its members.

Rev. Rul. 59-234, 1959-2 C.B. 149, holds that a real-estate board whose primary purpose or activities is the operation of a multiple listing system is not exempt from Federal income tax as an organization described in section 501(c)(6) of the Code. The operation of the multiple listing system was designed to render particular services for individual members as a convenience and economy in the conduct of their respective businesses.

Rev. Rul. 66-338, 1966-2 C.B. 226, holds that an organization's activities that provide members with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. They also constitute a business of a kind ordinarily carried on for profit even though they are conducted on a cooperative basis and produce only sufficient income to be self-sustaining. Such an organization is not exempt under section 501(c)(6) of the Code.

Rev. Rul. 67-264, 1967-2 C.B. 196, describes an association of nonprofit consumer cooperatives found to be exempt from Federal income tax under section 501(c)(6). The organization promotes the cooperative method of doing business by promoting the cooperative method of service, production, and distribution; spreading knowledge of the history, principles, and methods of the cooperative movement; encouraging the formation of cooperatives; and uniting consumer cooperative societies. The organization's membership is open to any organization organized and operated on a nonprofit cooperative basis. Its activities consist of uniting nonprofit consumer cooperative societies; encouraging and assisting in the formation of local cooperatives; educating the public on the principles and methods of cooperation; carrying on technical training for cooperative advisors, workers, and administrators; collecting and publishing information on cooperatives and allied subjects; holding a national congress of delegates from member societies; and maintaining a service of research and information on legislation affecting cooperatives.

Rev. Rul. 68-264, 1968-1 C.B. 264, holds that the operation of a traffic bureau is a convenience and economy to members in their businesses, resulting in savings and simplified operations. Such an activity constitutes the performance of particular services.

Rev. Rul. 74-81, 1974-1 C.B. 135, holds that an organization whose principal activity was to provide its members with group workmen's compensation insurance that was underwritten by a private insurance company was not exempt under section 501(c)(6) of the Code. In carrying out this activity, the organization relieved its members of having to obtain insurance on an individual basis, resulting in a convenience in the conduct of their businesses. The organization rendered particular services for individual persons as distinguished from the improvement of business conditions in the contracting and related industries generally.

Louisiana Credit Union League v. U.S., 693 F.2d 525 (5th Cir. 1982), involved a business league formed to promote the common business interests of its members by advancing the credit union movement. The organization endorsed and provided administrative services in

connection with insurance, data processing, and debt collection for its member credit unions. According to the court, "it is the distinctiveness of the activity that cements the substantial relationship" between the activity and the exempt function. The types of services provided to the organization's members, however, were not unique but rather were available commercially. Moreover, all of the services involved individual rather than group benefits because the benefits accrued only to the members who chose the services. Because they were neither unique in character nor inherently group oriented, the services provided to its members were not substantially related to the organization's exempt purposes.

National Water Well Ass'n, Inc. v. Comm'r, 92 T.C. 75 (1989), involved an association of persons engaged in the water well industry. The organization is a business league exempt from Federal income tax under section 501(c)(6). The organization sponsors various insurance programs for its members, including life insurance, accident and disability insurance, industry casualty insurance, errors and omissions insurance, and health insurance. The organization agreed to endorse and sponsor Maryland Casualty's comprehensive casualty program. It entered into a written agreement with Maryland Casualty in which it agreed to (1) provide assistance in endorsing, promoting, and sponsoring the insurance program, give Maryland Casualty cooperation and advice in presenting the insurance program to potential participants, make known the availability of the insurance program to its members, not sponsor or endorse any other property or casualty insurance program, and cooperate and assist in the collection of any premiums that are payable to Maryland Casualty. The Court held that the test as to whether the conduct of such a trade or business is substantially related to the business league's exempt purpose is whether the activity is conducted to provide benefits to the business league or industry as a whole as opposed to benefits to members in their individual capacity in proportion to fees paid. The Court found that the organization's endorsement and sponsorship of the industry casualty insurance program was not substantially related to its exempt purpose. Only those individuals who paid premiums received insurance under the program. Any benefits the organization's nonsubscribing members may have received were only incidental to the organization's efforts to endorse and sponsor the insurance program. The court noted that if the organization had intended to support the mutual interests and welfare of the water well industry it would not have selected only one insurance company to promote and advertise. If the organization had intended to educate and advise its members of the need for casualty industry insurance, it might have advised its members of various types of insurance from which its members could select. The court also noted that the fact that a group insurance plan is available does not mean that the common business conditions of those who work in the business league's industry also improve.

We find that you are not described in section 501(c)(6) of the Code for the following reasons: (1) your activities are primarily directed to the performance of particular services for individual persons rather than the improvement of business conditions of one or more lines of business; and (2) your purpose is to engage in a regular business of a kind ordinarily carried on for profit (even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining) rather than to promote a common business interest of your members.

You have failed to establish that you have been organized so that your activities will

serve to advance the interests of one or more lines of business rather than the private interests of your members.

You have been created expressly for the purpose of providing products to your Member ***** at significant discounts. You explain that consistent with section 501(c)(6) of the Code, the association represented by your Member ***** promotes the cooperative method of doing business in order to secure low-cost ***** benefits and associated ***** services for their members.

You cite Rev. Rul 67-264, supra, in support of your exemption request. In the revenue ruling, the organization established that it qualified for exemption under section 501(c)(6) by showing that its purposes and activities served to advance the interests of consumer nonprofit cooperatives in general rather than serving to provide particular services, such as discounted products, to its membership. The line of business represented by the organization was one comprised of nonprofit organizations whose underlying function was to operate as cooperatives. The organization's time and resources were directed to activities directly related to advancing the interests of the line of business as a whole, such as increasing the number of cooperatives and educating those engaged in the line of business and the general public about cooperatives.

Your stated purpose of providing discounted products to your Member ***** is not an exempt purpose within the meaning of Section 501(c)(6). Section 1.501(c)(6)-1, supra. Providing a convenience or an economy of scale through membership in an organization has consistently been rejected by the courts and by the Service as a valid purpose for recognizing organizations for exemption as business leagues, boards of trade or chambers.

You are similar in your purposes and the nature of your activities to the organization described in Produce Exchange Stock Clearing Association, supra. In that case, the Court found that serving as a convenience to members is not a shared characteristic of entities seeking recognition as business leagues. The Court specifically stated that it found no reason apparent for exempting an association that serves each member as a convenience or economy in his business. See also, Growers Cold Storage Warehouse Co., supra; Evanston-North Shore Board of Realtors, supra; Indiana Retail Hardware Association, Inc., supra; Rev. Rul. 56-65, supra; Rev. Rul. 66-338, supra.

An organization exempt under section 501(c)(6) of the Code cannot be organized for profit or be organized to engage in an activity ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining. Section 1.501(c)(6)-1, supra. The majority of your income is derived from and expended on activities directly related to your making discounted services available to your Membership *****, activities which do not serve to further an exempt purpose within the meaning of the statute. See, Indiana Retail Hardware Association, Inc., supra. The quantity and quality of the discounted services you can make available to your members varies in proportion with the number of members you are able to enroll in the programs.

Section 1.501(c)(6)-1 of the regulations provides that activities conducted by organizations recognized as exempt as under section 501(c)(6) of the Code are to be directed to the

improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. Your activities serve primarily to promote the interests of your membership. The benefits that are derived from your activities are related to the selection of ***** services made by your members. Any benefit conferred upon the line of business as a whole is incidental. See, Contracting Plumbers Cooperative Restoration Corp., supra.

In making the discounted services available to your Member *****, you provide them with particular services by relieving them of having to obtain bids and negotiate with *****. These services are similar to those discussed in Evanston-North Shore Board of Realtors, supra. See also, Rev. Rul. 74-81, supra. Your Member ***** are also the recipients of your particular services in monitoring the providers with whom you contract for services, assisting members in resolving problems with the providers, and negotiating future contracts. See, Apartment Operators Association, supra; Rev. Rul. 68-264, supra; Rev. Rul. 74-81, supra.

You state that you are involved in educational activities related to cost containment. However, you have failed to furnish any specifics regarding what these educational activities consist of, who has access to the information, and the amount of your time and resources allocated to them so as to demonstrate that such activities would be directed towards the improvement of a line of business in more than just an incidental manner.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
*****, SE:T:EO:RA:T:2
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Marvin Friedlander
Acting Manager
Exempt Organizations
Technical Group 2